Scoping Comments of the Colorado River Water Conservation District on the Aspinall Unit Operations Environmental Impact Statement

Aspinall Unit History and Purpose

The Aspinall Unit scoping package suggests a very broad range of authorized purposes. It quotes the 1956 Colorado River Storage Project Act (CRSPA):

> "In order to initiate the comprehensive development of the water resources of the Upper Colorado River Basin, for purposes, among others, of regulating the flow of the Colorado River, storing water for the beneficial consumptive use, making it possible for the states of the Upper Basin to utilize, consistently with the provisions of the Colorado River Compact, the apportionments made to and among them in the Colorado River Compact and the Upper Colorado River Basin Compact, respectively, providing for the reclamation of arid and semiarid land, for the control of floods, and for the generation of hydroelectric power, as an incident to the foregoing purposes."

and the 1968 Colorado River Basin Act:

> "...the purposes among others, of regulating the flow of the Colorado River; controlling floods; improving navigation; providing for the storage and delivery of the waters of the Colorado River for reclamation of lands, including supplemental water supplies, and for municipal, industrial, and other beneficial purposes; improving water quality; providing for basic public outdoor recreation facilities; improving conditions for fish and wildlife, and the generation and sale of electrical power as an incident of the foregoing purposes."

and, finally the criteria for Coordinated Long-Range Operation of Colorado River Reservoirs:

> "...reflect appropriate consideration of the uses of the reservoirs for all purposes, including flood control, river regulation, beneficial consumptive uses, power production, water quality control, recreation, enhancement of fish and wildlife, and other environmental factors."

From within these broad purposes, the River District believes that, based on the legislative history and Economic Justification Report formally submitted by the Secretary of the Interior to Congress to justify the construction of the Aspinall Unit, the primary purpose of Aspinall is provided in the 1956 Act - "regulating the flow of the Colorado River, storing water for beneficial consumptive use, ***making it possible for the states of the Upper Basin to utilize***, consistently with the provisions of the Colorado River Compact, ***the apportionments made to and among them*** in the Colorado River Compact and the Upper Colorado River Basin Compact." (Emphasis added)

The Water Supply section (Chapter IV) of the 1959 Economic Justification Report provides further support for this conclusion. On page 18 the Secretary of the Interior concludes "[t]he reservoirs of the Curecanti unit will have a total of 700,000 acre-feet of active storage capacity. During the critical periods of subnormal runoff such as occurred between 1931-1956 this volume, reduced by an estimated 402,000 acre-feet of evaporation loss, will yield 298,000 acre-feet of water. This represents 4% of the total water that will be available in the Glen Canyon, Flaming Gorge and Curecanti (renamed Aspinall) units of the Colorado River storage project and ***which will be required to meet Colorado River Compact requirements at Lee Ferry during critical periods of subnormal runoff*** when upper basin stream depletions reach 6,191,000 acre-feet annually." (Emphasis added) (6.191 million a.f annually was the allowable Upper Basin depletions as of 1959).

The Financial and Economic Analysis section (Chapter VII) of the 1959 report provides further support. On page 31 the "BENEFITS" paragraph states "[t]he irrigation benefits of the Curecanti unit will result from ***the ability of the unit to assist in making water deliveries to the lower Colorado River Basin during drought periods,*** thereby permitting an expansion of consumptive use of water in the upper basin." (Emphasis added)

The summary of costs and evaluated benefits table on page 33 shows that for the 50-year period of analysis, it was the benefits associated with irrigation (deliveries of water to the Lower Basin) and recreation that resulted in a net positive benefit to cost (b-c) ratio allowing the Secretary to conclude that Aspinall was economically feasible. The power component alone had a b-c of less than one (over 50 years).

The conclusions made by Reclamation in the late 50s remain valid today. In September 2003, the Bureau of Reclamation, through the Upper Colorado River Basin Regional Office published an Environmental Assessment (EA) on the adoption of interim 602(a) guidelines. In Section 602(a) of the Colorado River Basin Project Act, Congress instructed the Secretary of the Interior to make an annual determination of the quantity of water considered necessary to be in storage in Upper Basin reservoirs to provide protection to the Upper Division states of Colorado, New Mexico, Utah and Wyoming against drought.

The actual details of the 602(a) calculation may not be important to the Aspinall Unit EIS, but Reclamation's conclusion on page 8 of the 602(a) EA is important: " [w]ith increased uses, more water is needed in storage to assure required deliveries to the Lower Basin without the impairment of Upper Basin uses. Eventually it is expected that, later in this century, when the Upper Basin has fully developed its use of the Colorado River, the computed 602(a) storage level ***will approach the entire reservoir capacity of the Upper Basin mainstem storage reservoirs."*** (Emphasis added)

Our point is very simple. The scoping notice suggests that Reclamation has very broad discretion to meet a wide range of purposes with the operation of the Aspinall Unit. This conclusion is supportable only with a major qualification. The supporting documentation for the Aspinall Unit demonstrates that the construction of the Aspinall Unit was recommended by the Secretary of the Interior and approved by Congress for the <u>primary</u> purpose of providing storage water to meet downstream Colorado River Compact requirements during dry year periods. In 1959, the Secretary

of the Interior determined that the entire available yield of the Aspinall Unit was needed for this purpose. This conclusion was reconfirmed in 2003, when Reclamation again concluded the entire capacity was needed to "assure required deliveries to the Lower Basin."

The River District believes that all of the EIS reasonable alternatives must completely protect the compact purposes. Within the overriding compact purpose, Reclamation has operational flexibility with respect to the timing of storage and releases, but Reclamation has no authority under the federal law to dispose of any water stored in Aspinall or change the operation of the Aspinall Unit in any manner that reduce or limits the compact protections provided by the Aspinall Unit to all Upper Division states.

Existing Commitments and Baseline Conditions

By letter to your office, dated February 5, 2003, the River District, Uncompahgre Valley Water Users Association, Upper Gunnison River Water Conservancy District, Tri-County Water Conservancy District and Redlands Water & Power Company identified a list of existing commitments that needed to be included within the baseline assumption as a part of the Aspinall Unit EIS.

The February 5, 2003 letter is hereby attached and made a part of the River District's scoping comments. The EIS must include an analysis of how each of the alternatives impacts each of the nine commitments listed in the letter.

Aspinall Unit Water Rights

The water rights for the Aspinall Unit were adjudicated and made absolute by the River District. Most of the River District's actions to perfect the rights were accomplished with the complete cooperation, guidance, or direct supervision of Reclamation or Department of the Interior Solicitor's Office personnel.

On behalf of Redlands Water & Power Company, Mike Gross has provided Reclamation with an outline of the Aspinall Unit Water Rights Adjudication History. The outline prepared by Mr. Gross is attached and made a part of the River District's scoping comments.

The River District believes that through Reclamation's actions to direct the River District to obtain the decree in CA5782, Reclamation made a major policy commitment to the Gunnison River Basin on how the Aspinall Unit was to be operated. The operable language in the decree is "releases from said reservoir through the Crystal Reservoir Power Plant conduit, or over the spillway of the dam, ***insofar as available, be in such quantity as will satisfy at all times prior decrees from said Gunnison River below the Crystal Dam*** when commingled with the natural accretions in the channel of said river." (Emphasis added)

The River District requests that evaluation criteria for each EIS alternative specifically include an analysis of how the alternative affects Reclamation's ability to comply with the decree in CA5782.

A change in the operation of the Aspinall Unit which alters the historical river call regime on the mainstem of the Gunnison River will have major impacts on virtually every water user in the Gunnison River Basin with water rights junior to the 1905 priority of the Redlands senior right.

Redlands Fish Ladder Operation
(Contract 95-07-40 R 1760)

The Interim Fish Ladder Agreement was specifically designed to provide sufficient water for the operation of the Redlands fish ladder, including a minimum stream flow in the "2 mile" reach of the Gunnison River below the ladder, so that the Recovery Program actions would not cause an additional burden on Gunnison River Basin water users by triggering a river call when a call would not have occured absent the operation of the ladder. It has always been the River District's assumption that environmental commitments made by Reclamation in a Gunnison River Basin PBO or Aspinall Unit EIS would replace the Interim Fish Ladder Agreement.

The Aspinall Unit EIS including each reasonable alternative, must include a complete analysis of the water needed for both the continued operation of the fish ladder and the planned Redlands fish screen, which is to be installed in 2005 with the goal of not impacting upstream water users. Where the analysis shows that there will be impacts on upstream water users, the EIS needs to propose appropriate mitigation.

Aspinall Unit Yield

The fictional existence of an Aspinall Unit "marketable" yield or pool has been the subject of considerable discussion through letters and various correspondence. The amount of this "marketable" pool has been variously claimed to be between 240,000 and 300,000 acre feet. It is the River District's opinion that the reservoir unit has an available yield. This yield covers all uses and there is no separate "marketable pool" authorized or supported by any legal authority.

Our understanding of the origin of this concept of a "marketable" pool began with Ron Johnston's testimony in the Union Park case and ultimately ended as a footnote (based on dictum) in the second Colorado Supreme Court decision on the Union Park case. The footnote also makes it clear that any marketable amount is subject to existing obligations and federal requirements (such as the ESA or section 602(a) of the 1968 Act).

The River District notes that the scoping notice and January 2004 EIS background material makes no mention of a "marketable" pool. We are also not aware of any Reclamation record-of-decision establishing or quantifying a "marketable" pool. Page 9 of the EIS background material notes that "[w]ater sales have been completed or are being negotiated from Blue Mesa... These sales total less than 1,000 acre feet."

As previously mentioned, a 298,000 a.f. yield figure is mentioned in the text of the Water Supply chapter of the Economic Justification Report. The yield number is based on a simulated 100 year period using actual hydrology from the period of 1914 through 1957, modified to allow for

additional upstream depletions over a 50 year period. These depletions cover some, but not all of the 60,000 a.f. subordination. The minimum flow through the Black Canyon was assumed only to be 100 cfs and downstream water rights were not modeled. Downstream rights were simply assumed to be satisfied at all times.

Simply put, by today's standards, the 1959 hydrology was very simplistic. It includes the 1954-1956 dry period, but this period is not as dry as the 2001- 2003 period. The 100 cfs assumption is not valid today. With river administration during dry periods when flows in the Black Canyon drop below approximately 300 to 350 cfs, it triggers a downstream senior Redlands call, thus requiring Aspinall at a minimum, to bypass all inflow. Further, it appears that the Black Canyon National Park settlement will result in a minimum of 300 cfs through the canyon.

Finally, an undetermined but significant amount of the reservoir yield is already obligated for a variety of purposes. For example, pages 8 and 9 of the Background material refers to the need to cover 17,200 a.f. of water needed to cover depletions of the Dallas Creek Project and another 131,000 a.f. to cover the Dolores Project for ESA purposes.

It has always been the River District's understanding that the Dolores and Dallas Creek opinions, which have never been updated to include the listing of the razorback sucker and the designation of critical habitat, would ultimately be made a part of and succeeded by an Aspinall Unit/Gunnison River Basin PBO under which Aspinall releases for downstream ESA purposes would be the critical component.

The River District believes that after the Aspinall Unit record-of-decision has been completed and a Gunnison River Basin PBO implemented, Reclamation can then, and only then, determine what amount of the Aspinall Unit yield (beyond the relatively small amount of existing and foreseeable future in-basin contracts) may be marketed. As discussed previously though, all Aspinall Unit contracts are subject to the primary purpose of meeting compact demands.

Attachments
Baseline Conditions for the Proposed Aspinall Unit Environmental Impact Statement, February 5, 2003
Aspinall Unit Water Rights Adjudication History
Letter from Commissioner John Keys to Rod Kuharich, February 13, 2002